

**BOARD MEETING MINUTES
FEBRUARY 25, 2022**

1. CALL TO ORDER.

Dr. Gutierrez called the February meeting of the Texas Optometry Board (TOB) to order at 9:00 a.m.

2. ROLL CALL.

A roll call vote was taken and quorum was present for the meeting.

Mario Gutierrez, O.D.	Chair
Ronald L. Hopping, O.D.	Vice Chair
Judy Chambers	Secretary/Treasurer
Carey A. Patrick, O.D.,	Member
John Todd Cornett, O.D.	Member
Bill Thompson, O.D.	Member
Meghan Schutte, O.D.	Member
Rene Pena	Member
Ty Sheehan	Member
Kelly Parker	Executive Director
Vincent Pina	Executive Assistant
Dennis McKinney	Assistant Attorney General

3. MINUTES.

The Board reviewed the November 19, 2021 meeting minutes. A motion was made by Mr. Sheehan to accept the minutes and seconded by Dr. Thompson. The motion passed unanimously. (FOR – 9/OPPOSED – 0/ABSTAIN – 0)

4. BOARD CHAIR REPORT.

Dr. Gutierrez presented the Board Chair Report. He thanked board members for their flexibility with the meeting schedule. Dr. Gutierrez thanked Ms. Parker, Mr. McKinney and the Rules Committee for their continuous work on SB993 rules. He reminded the Board about the workgroup established for the quadrennial rule review. Dr. Gutierrez thanked Drs. Cornett and Thompson for their participation in the workgroup. He noted that since Dr. Thompson has been assigned to the Rules Committee, Dr. Schutte will replace him on the workgroup. Dr. Gutierrez mentioned the agency's continued goal to increase customer

service and communication and noted the Board now has a Facebook page. Finally, Dr. Gutierrez thanked the Texas Optometric Association for inviting the agency to participate in the recent TOA event. He noted that this was beneficial for everyone and recommended the Board participate in events like this in the future.

5. GENERAL MATTERS.

The Board discussed and considered the Agenda item under General Matters as follows:

- a. **Committee Assignments.** Dr. Gutierrez reviewed the new committee assignments. He thanked Dr. Patrick for her service on the Rules Committee and thanked Dr. Thompson for his leadership on the Continuing Education Committee. Dr. Gutierrez mentioned how much he appreciated the public members' service on the committees.
- b. **Optometry School Liaison Reports.** Dr. Schutte provided an update on behalf of the Rosenberg School of Optometry. She said she spoke to Dr. Fortenberry but did not have any official information to update the Board. Dr. Cornett provided an update from the University of Houston. Dr. Cornett mentioned that most of Dean Twa's concerns centered on the professional responsibility course and its cost. U of H has reduced the course and bundled it with other courses. The cost is in alignment with similar fees that are charged by other states. Dr. Cornett stated that Dean Twa informed him that one hundred percent of the cost from the professional responsibility course goes to student scholarships. If we can increase the value, the cost concerns go down. Dean Twa also mentioned that CE Broker is working well and is pleased with the platform.
- c. **Jurisprudence Exam Update.** Dr. Gutierrez thanked Dr. Patrick and Ms. Parker for their work on the jurisprudence update. Ms. Parker discussed the updated exam. Ms. Parker also noted that Dr. Gutierrez and Dr. Cornett, Chair of the Administrative/Licensing Committee, have both seen the exam. Ms. Parker reported that the exam update will be submitted to NBEO.
- d. **Update on opinion on light delivery device for light adjustable lens.** Dr. Gutierrez reminded the Board that at the November meeting Dr. Schutte provided the Board with information on this topic. However, at this time, Dr. Gutierrez advised that the Board is going to hold off on issuing an opinion and continue to receive information. Dr. Gutierrez clarified that the Board reserves the right to issue an opinion on this issue in the future.

6. PUBLIC COMMENT.

The Public Comment period opened at 10:00 a.m.

Laura Thetford Palmer, Associate General Counsel, Texas Medical Association(TMA) - Ms. Palmer noted that she had originally submitted a public comment card but withdrew the card prior to the meeting. Ms. Palmer thanked the Board for their time and consideration of the work that has been

done related to the SB993 rules. She thanked the Board for consideration of TMA’s comments. Per Ms. Palmer, TMA is still reviewing the proposed changes that the Board is considering but noted they appreciate the intent of what has been done so far with the Board’s work on it. Ms. Palmer also noted that Ms. Parker has been great in facilitating the conversation with stakeholders as well.

7. EXECUTIVE DIRECTOR’S REPORT.

Ms. Parker presented the Executive Director’s Report.

Budget Update. Ms. Parker provided an overview of the budget update. She advised the Board that the agency has finally hired a part-time accountant, Ms. Dianne Hobson. Ms. Hobson is working with Vincent Pina and the Board of Nursing to transition into her new position. Ms. Parker pointed the Board to the budget update as of December 31, 2021 and noted that due to permissions and transition there was a delay in providing up-to-date information for this meeting. She promised an up-to-date report, as usual, at the next meeting.

Licensing Statistics. The following are licensing statistics as of February 16, 2022:

Total Licenses	5,048 (4,608 active; 436 inactive; 3 retired)
Total OGS	3,832 (3,713 active; 118 inactive, 1 retired)
Military	122

Dr. Robert Thompson, license number #2119TG, passed away on December 19, 2021.

Performance Measures. Ms. Parker reported that the agency filed quarterly performance measures for 1Q of 2022 on January 5, 2022. The agency met all performance metrics for the first time since September 2020. Specifically, Ms. Parker reported that the agency cleaned up the enforcement docket and so that contributed to meeting the “average days to case resolution” metric. However, Ms. Parker did note that she anticipates that the “average days to case resolution” metric may fluctuate because of a few complex cases that are taking longer or involved in litigation.

Office Relocation. Ms. Parker reported that the agency has received a tentative move date of June 10, 2022. She noted that once the date is confirmed the website and Facebook page will be updated accordingly. In the meantime, agency staff are continuing to clean the office out and prepare for the transition to the new location.

Website. Ms. Parker advised that in keeping with the Board’s goal of increased customer service and efficiency, the TOB website is currently being

redesigned and updated with the help of the Health Professions Council. (HPC). Ms. Parker explained that she and Vincent Pina have participated in meetings with HPC to discuss agency needs and ideas. The updated website should be released in the next few months.

Strategic Plan. Ms. Parker reminded the Board that every even year, as part of the budget process, each state agency must produce an agency Strategic Plan pursuant to Texas Government Code, Chapter 2056. Ms. Parker advised the Board that they would be receiving more information on this topic and have the opportunity to provide information for the process.

ED Activities. Ms. Parker summarized her involvement in some activities since the last Board meeting. She participated as a panelist at the Federation of Association of Regulatory Boards meeting in Ft. Worth, Texas. Recently, she attended the Texas Optometric Association (TOA) conference. Specifically, at the TOA conference, she collaborated with CE Broker to provide guidance and assistance to licensees. Ms. Parker reported that she continues to meet weekly with other agency heads regarding relocation issues and biweekly with a statewide group for all issues affecting state agencies. Ms. Parker also noted that since the last Board meeting, she has held two stakeholder meetings.

8. LEGAL REPORT.

No new report.

9. COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Cornett, Chair of the Administrative/Licensing Committee, thanked Dr. Patrick the previous Chair of the Administrative/Licensing Committee and Dr. Gutierrez for their work on the jurisprudence exam update. Dr. Cornett further reported three exams were held since the last Board Meeting (22 total registrants, 20 total took the exam, 19 total passed the exam). Since the last Board Meeting, 26 new licenses were issued. Dr. Cornett mentioned that the Committee discussed the passing exam rate of the jurisprudence exam. He noted that the Committee would continue to consider whether to change the pass rate. The Committee reviewed two applications for licensure without an exam and the candidates were approved. Dr. Cornett moved the recommendation of the Committee that the Board approve two candidates for license without examination. Mrs. Chambers seconded the motion. (FOR-9/OPPOSED-0/ABSTAIN-0)

CONTINUING EDUCATION COMMITTEE.

Dr. Patrick, Chair of the Continuing Education Committee, thanked Dr. Thompson, the previous Chair of the Continuing Education Committee, for his good work on the CE Broker contract and continuous work on the committee. Dr. Patrick reported that the committee reviewed, discussed and acknowledged the revised COPE categories of courses. She noted that the committee continues to discuss progress with the CE Broker platform. Dr. Patrick further reported the committee discussed the helpful feedback from

the Stakeholder Meeting on CE issues that was held in early February. Dr. Patrick moved the recommendation of the Committee to remand the issue of implementation of CPR requirements for initial and renewal of licensure along with the recommendation of approving the Texas Optometric Association as a preapproved provider of the professional responsibility course.

Ms. Parker additionally provided that the Committee reviewed a total of 27 continuing education courses, which included 62 hours of D/T, three hours of general, five hours of professional responsibility, and four opioid hours. Dr. Thompson moved to approve the continuing education courses and Dr. Patrick seconded the motion. (APPROVE-9/OPPOSED-0/ABSTAIN-0)

Dr. Hopping moved to take the agenda out of order and hear the Committee on Peer Assistance report. Mr. Sheehan seconded the motion. (APPROVE-9/OPPOSED-0/ABSTAIN-0)

COMMITTEE ON PEER ASSISTANCE.

Mrs. Chambers, Chair of the Committee on Peer Assistance, reported that the TOB has four optometrists (three volunteers and one board-ordered) in the Professional Recovery Network (PRN) program. She noted that the agency received a report that the board-ordered optometrist had slipped a bit and he is currently working with PRN's medical review officer. Mrs. Chambers noted that if the board-ordered optometrist violates the Order or program, the agency would be notified so the Board may take action, if necessary.

INVESTIGATION-ENFORCEMENT COMMITTEE

Case No. 2021-00081

Mrs. Chambers moved to go into Executive Session to consult with legal counsel as authorized by Section 551.071 of the Government Code for legal advice and guidance related to Case No. 2021-00081 and Dr. Hopping seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

At 10:04 a.m., the Board went into Executive Session to consult with legal counsel and get legal advice concerning legal matters involving case number 2021-00081. The Board returned to Open Session at 10:31 a.m. The Board did not take any action during the Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendation of the Investigation-Enforcement Committee for Case No. 2021-00081. Ms. Parker reported that the Investigation-Enforcement Committee recommended the following:

- Respondent shall enroll in the peer assistance program for a professional evaluation to determine his fitness to practice no later than 30 days from the date of the fully executed Agreed Order.
- If, the PRN evaluator determines the Respondent is fit to practice and hold a license without restrictions or conditions, then the matter will be closed and considered satisfied.
- If the PRN evaluator determines that the Respondent is not fit to practice, the Board is obligated to consider actions necessary to protect the health and safety of the public. Furthermore, the Board will set an informal settlement conference where the Respondent may present any issues with the PRN evaluation or additional recommendations.
- Respondent shall comply with all provisions of the Act, rules of the Board, and provisions of the Order.

Dr. Patrick moved to accept and second the recommendations of the Investigation-Enforcement Committee related to Case Number 2021-0039. The motion passed unanimously. Dr. Gutierrez, Dr. Thompson and Mrs. Chambers abstained from the vote. (FOR-5/AGAINST-0/ABSTAIN-3)

Ms. Parker provided a summary of investigative activity to the Board regarding complaints and investigations since the last Board meeting. Ms. Parker noted the agency is seeing a trend in complaints they are receiving at agency. Specifically, she noted that the trend is concerns over the standard of care in telehealth visits. Finally, Ms. Parker reported that since the last meeting, the agency received one complaint that indicated some connection to the possible treatment of glaucoma. However, Ms. Parker clarified that the complaint was closed as non-jurisdictional because the subject of the complaint was an ophthalmologist not licensed with agency. The complaint was forwarded to the Texas Medical Board on February 14, 2022. The complainant was also notified. She further advised that the agency does not have any other active investigations related to glaucoma.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, started by thanking Dr. Patrick for her thoughtful work and detailed analysis of rules during her time on the Committee. Dr. Hopping welcomed Dr. Thompson to the Committee and looks forward to working with him. He also noted that Mr. Sheehan continues to be an asset to the committee along with Mr. McKinney. Finally, Dr. Hopping thanked Ms. Parker for her continuous work related to the SB993 rules.

Proposal: *22 TAC 273.5 Clinical Instruction and Practice – Limited License for Clinical Faculty.*

Dr. Hopping moved to offer the Rules Committee's recommendations for proposed amendments to §273.5 be sent to the Governor's Office for approval and subsequent posting in the *Texas Register* with preamble for public comments. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/OPPOSE-0/ABSTAIN-0) Dr. Hopping moved to amend the Committee's recommendation to add "or school" after college and remove

the word “state” in (g), (g) (1), and (g)(2). Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/OPPOSE-0/ABSTAIN-0).

Dr. Hopping thanked everyone for their continuous work on SB993 rules. Dr. Hopping noted that he appreciated TMA’s Comments and acknowledged that Ms. Parker has appreciated the good working relationship with the Texas Medical Board. Furthermore, Dr. Hopping noted that the Rules Committee has incorporated everything recommended by the Texas Medical Board into every draft of the rules considered by the Board. Dr. Hopping acknowledged that the Board has received a variety of public comments (Texas Medical Association; Texas 400; Texas Optometric Association; Texas Ophthalmology Association) due to the publication in the *Texas Register*. The agency also held a stakeholder meeting and gathered feedback. He noted that the Rules Committee has made several modifications based on the comments and the revised versions of the rules are being presented for consideration.

Proposal: *22 TAC 277.13 Complaints Resulting From Glaucoma Treatment – Investigation Process.*

Dr. Hopping moved the Rules Committee recommendation to propose the revised version of §277.13 be sent to the Governor’s Office for approval and subsequent posting in the *Texas Register* with preamble for public comment. Dr. Cornett seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-9/ABSTAIN-0)

Dr. Hopping moved to amend the motion based on a recommendation from the Texas Medical Board to clarify the language related to the composition of the expert panel. Ms. Parker commented that the recommendation was received from the Texas Medical Board right before the meeting began and requested that the Texas Medical Board Executive Director, Mr. Brint Carlton, be able to confirm that the amendment was satisfactory. Dr. Gutierrez asked Mr. Carlton to discuss the amendment with the Board. Mr. Carlton thanked the Board for the opportunity and noted he appreciated the collaboration throughout the process with Ms. Parker. The Board discussed the recommendation of the Texas Medical Board and amended the rule. Dr. Hopping moved to send the amended version of the rule to the Governor’s Office for approval and subsequent posting in the *Texas Register* with preamble for public comment. Mrs. Chambers seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

Proposal: *277.14 Complaints Resulting From Glaucoma Treatment – Use of Case Review Consultant and Expert Panel.*

Dr. Hopping moved the Rules Committee recommendation to propose the revised version of §277.14 be sent to the Governor’s Office for approval and subsequent posting in the *Texas Register* with preamble for public comment. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

Dr. Hopping further explained that based on the revisions that have been approved for proposal there is no longer a need for the previous proposed

§277.15 and therefore the Committee withdrawals that request from Board consideration. Lastly, Dr. Hopping noted that the Committee hopes to have recommendations for the quadrennial rule review of Chapter 277 at the next meeting.

10. QUARTERLY BOARD MEMBER TRAINING.

Ms. Parker provided a quarterly board member training on rulemaking. The training including legislative authority, required rulemaking, permissive rulemaking, ad hoc rule, quadrennial rule review and potential legal challenges.

11. ANNOUNCEMENTS.

Dr. Gutierrez announced that the next scheduled meeting is set for May 5-6, 2022.

12. ADJOURNMENT.

Dr. Patrick moved that the meeting be adjourned, Dr. Hopping seconded the motion. The motion passed unanimously. The meeting was adjourned at 11:25 a.m. (FOR-9/AGAINST-0/ABSTAIN-0)